

LABOUR DEPARTMENT

The 5th June, 1986

No. 9/9/86-6Lab./4105.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of Haryana Roadways, Karnal.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 2/1983

between

SHRI NANAK CHAND, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, KARNAL

Present :

Shri Raghbir Singh, for the workman.

Shri S. N. Gaur, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Nanak Chand, workman and the management of Haryana Roadways, Karnal to this Tribunal for adjudication :—

Whether the termination of service of Shri Nanak Chand was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement dated 24th January, 1983 it was alleged that the claimant was appointed as Assistant Blacksmith through the Employment Exchange on 1st January, 1981 and worked upto 20th October, 1981. It was further alleged that the claimant had completed 240 working days but his services were terminated without any notice and as such the action of the management was illegal. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The management in its written statement filed on 20th February, 1983 pleaded that the petitioner was appointed as Blacksmith with effect from 2nd January, 1981 on purely *ad hoc* basis for a period of six months and that according to the appointment letter his service was liable to be terminated at any time without assigning any reason and without serving any notice. It was also pleaded that on 27th August, 1981, the services of the claimant were terminated in accordance with the terms and conditions of appointment of the petitioner.

4. The claimant in his rejoinder dated 22nd March, 1983 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 22nd March, 1983 :—

(1) Whether the termination of service of Shri Nanak Chand was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the management has examined one witness and documents Ex. M-1 and M-2 have been tendered into evidence. The claimant has examined two witnesses and document Ex. W-1 has been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issue is as under :—

Issue No. 1 :

7. The management has examined M.W-1 Shri Karam Chand, Clerk, Haryana Roadways Karnal, who stated that the claimant was appointed on 1st January, 1980 for six months on

ad hoc basis,—*vide* order copy Ex. M-1, and that his services were terminated on 27th August, 1981,—*vide* order copy Ex. M-2 and further that he remained in service for 7 months and 27 days.

8. The claimant also examined Shri Karam Chand, Clerk, Haryana Roadways, Karnal, as WW-1, who stated that he had not brought the attendance record and overtime slips relating to the claimant as the same were not available for the period 27th July, 1981 to 22nd October, 1981. WW-2 Shri Nanak Chand, claimant stated that he was employed on 1st January 1981 as Assistant Blacksmith and worked upto 22nd October, 1981 when he was turned out. The copy of the circular Ex. W-1 has been produced by this witness. He further stated that, no notice pay or compensation was given to him.

9. A perusal of the above evidence would show that the case of the management is that the claimant worked on *ad hoc* basis from 1st January, 1981 to 27th February, 1981,—*vide* documents Ex. M-1 and M-2. The case of the claimant, on the other hand; is that he worked from 1st January, 1981 to 22nd October, 1981 and that no notice pay or compensation was given to him when his services were terminated. There is thus no dispute regarding the date of appointment i. e., 1st January, 1981. The management has proved the letter Ex. M-2 dated 27th July, 1981 in which it is recited that the services of the claimant be dispensed with immediately. This letter was issued by the General Manager, Haryana Roadways Karnal and the copy was endorsed to the claimant, etc. There is no evidence on behalf of the management that this letter was received by the claimant on 27th August, 1981 or that he was relieved on that very date. MW-1 Shri Karam Chand clerk stated he had not brought the muster rolls in which the presence of the claimant was marked. The claimant summoned Shri Karam Chand as WW-1 who stated that he had not brought the attendance record and over time slips relating to the claimant because the same were not available for the period 27th July, 1981 to 22nd October, 1981. The claimant took a specific plea and deposed that he worked upto 22nd October, 1981. The management failed to produce the muster rolls which was the best evidence to show the date upto which the claimant actually worked. The management failed to produce this documents when its clerk was summoned by the claimant and stated that the relevant record from 27th July, 1981 to 22nd October, 1981 was not available. It is thus apparent that the documents which can throw light on the point in issue have not been produced by the management on the plea that the same were not available. There is no evidence that these documents were lost and that the report regarding the loss was made to the concerned authorities. Under these circumstances, the management has failed to prove that the claimant worked up to 27th August, 1981. On the other hand, the claimant has taken a specific plea that he worked up to 22nd October, 1981. The claimant had completed 239 days continuous service on 27th August, 1981 and if the management wanted to terminate his service so that he could not complete 240 days service, they should have relieved the claimant on 27th August, 1981 and copy of the order should have been got noted from him. As already mentioned above, the best evidence on this point was the muster roll which has not been produced by the management. Consequently the claimant had completed 240 days service and as the provisions of section 25-F of the Industrial Disputes Act, 1947 apply to his case and since no notice pay or compensation was paid to the claimant, as such termination of his service was neither justified nor in order. Since the claimant was an *ad hoc* employee, therefore, it is not a fit case in which he should be reinstated but he should be given compensation equivalent to two years wages which he was drawing on 27th August, 1981. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated the 28th April, 1986.

Endorsement No. 285, dated the 28th April, 1986

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947..

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.